

SCHEDULES

SCHEDULE 12

PILLAR TWO

PART 2

MULTINATIONAL TOP-UP TAX

Tax credits

8 (1) After section 147 insert—

“147A Treatment of tax credits

- (1) The underlying profits of a member of a multinational group, and the covered tax balance of that member (see Chapter 5), are to be adjusted (if necessary) to secure that—
 - (a) qualifying refundable tax credits are accounted for as income rather than as tax expense,
 - (b) tax credits that are marketable transferable tax credits in relation to the member are accounted for as income rather than as tax expense, and
 - (c) other tax credits are accounted for as tax expense rather than as income.
 - (2) Section 148 sets out when tax credits are qualifying refundable tax credits.
 - (3) Section 148A sets out the meaning of “transferable tax credit” and “marketable transferable tax credit”.
 - (4) Sections 148B and 148C set out rules about the value of marketable transferable tax credits.
 - (5) Sections 176A to 176C (in Chapter 5) set out rules about the value of tax credits that are not marketable transferable tax credits but which are transferable or were transferred (and which as a result of subsection (1)(c) are generally to be accounted for as tax expense).
 - (6) See also sections 176D to 176F which contain special rules for tax credits received in under a tax equity partnership arrangement.”
- (2) In section 148 (treatment of qualifying refundable tax credits)—
- (a) in the heading, for “Treatment” substitute “Meaning”,
 - (b) omit subsection (1), and
 - (c) in subsection (4)(b), omit “tax”.

Status: This is the original version (as it was originally enacted).

(3) After that section insert—

“148A Transferable tax credits

- (1) A tax credit is a transferable tax credit in relation to a member of a multinational group if—
 - (a) the member is—
 - (i) the person to whom the credit was originally granted (“the originator”), or
 - (ii) a person (“a purchaser”) who has acquired the credit (whether from the originator or anyone else), and
 - (b) the transferability condition is met in relation to the member.
- (2) A transferable tax credit is a marketable transferable tax credit in relation to a member of a multinational group if—
 - (a) it is a transferable tax credit, and
 - (b) the marketable condition is met in relation to the member.
- (3) Those conditions are met differently depending on whether the member is the originator or a purchaser.
- (4) The transferability condition is met—
 - (a) in relation to the originator if, under the law of the territory in which the credit was granted, credits of that type may be transferred to a person or entity that is not connected with originator before the end of 15 months after the end of the accounting period in which the credit is granted, and
 - (b) in relation to a purchaser if, under the law of that territory, credits of that type may be transferred to a person or entity that is not connected with the purchaser—
 - (i) under the same or similar conditions as would apply to the originator, and
 - (ii) before the end of the accounting period in which it was transferred to the purchaser.
- (5) The marketable condition is met—
 - (a) in relation to the originator, if—
 - (i) the credit is transferred to a person or entity that is not connected with the originator before the end of 15 months of the accounting period in which the credit was granted at a price equal to or in excess of 80% of its net present value, or
 - (ii) similar credits are traded between persons or entities that are not connected to each other before the end of 15 months of the accounting period in which they are granted, and are typically traded at a price equal to or in excess of 80% of their net present value, and
 - (b) in relation to a purchaser, if the purchaser acquired the credit from a person or entity that is not connected to the purchaser at a price equal to or in excess of 80% of its net present value.

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- (6) Subsections (7) and (8) apply for the purposes of determining the net present value of a tax credit.
- (7) In making that determination, assume that the entity that holds it will be able to use it in the accounting periods in which it may be used.
- (8) The discount rate to be used in making that determination is to be determined by reference to the return on debt instruments that are issued by the government of the territory in which the credit was granted—
 - (a) that have—
 - (i) the same, or a similar, maturity to the period over which the credit is to be used, or
 - (ii) in a case in which the credit is to be used over a period exceeding 5 years, a maturity of 5 years, and
 - (b) that are issued—
 - (i) in relation to a credit that has been transferred, in the accounting period in which the credit was transferred, or
 - (ii) in relation to a credit held that has not been transferred, in the accounting period in which it was granted.
- (9) References in subsections (6) and (8) to an accounting period are—
 - (a) in relation to determining net present value in connection with determining whether the marketable condition is met by the originator, an accounting period of the originator, and
 - (b) in relation to determining net present value in connection with determining whether the marketable condition is met by a purchaser, an accounting period of the purchaser.
- (10) Where a transferable tax credit is also a qualifying refundable tax credit, it is to be treated as not being a transferable tax credit for the purposes of this Part.

148B Value of marketable transferable tax credits: originator

- (1) The underlying profits of a member of a multinational group that is the originator in relation to a marketable transferable tax credit are to be adjusted to secure that the value of marketable transferable tax credits it holds, and has held, as originator are reflected as follows.
- (2) Where the credit is not transferred before the end of 15 months after the end of the accounting period in which it was granted, the full value of the credit is to be recognised as income.
- (3) Where the credit is subsequently transferred for consideration which is less than the value of the credit, the difference between the value of the credit and the consideration received for its transfer is to be recognised as a loss in the accounting period in which it is transferred.
- (4) Where the credit is transferred before the end of 15 months after the end of the accounting period in which the credit is granted, the consideration for the transfer (rather than the value of the credit) is to be recognised as income.

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- (5) Where the credit has not been transferred, and was not fully used, before its expiry, the value of so much of the credit as has not been used is to be reflected as a loss in the accounting period in which the credit expired.

148C Value of marketable transferable tax credits: purchaser

- (1) The underlying profits of a member of a multinational group that is the purchaser in relation to a marketable transferable tax credit are to be adjusted to secure that the value of marketable transferable tax credits it holds, and has held, as purchaser are reflected as follows.
- (2) On using an amount of the credit in an accounting period, the amount given by subsection (3) is to be recognised as income.
- (3) That amount is the amount given by multiplying—
- (a) the amount used divided by the full value of the credit, by
 - (b) the amount given by subtracting the purchase price of the credit from the full value of the credit.
- (4) On transferring the credit, the amount in subsection (5) is to be reflected in the underlying profits for the accounting period in which the transfer occurred—
- (a) if positive, as a gain, or
 - (b) if negative, as a loss.
- (5) That amount is the amount given by subtracting—
- (a) the sum of—
 - (i) the purchase price of the credit, and
 - (ii) any amounts recognised as income in accordance with subsection (2) (whether in that accounting period or a previous accounting period), from
 - (b) the sum of—
 - (i) the amount of the credit that has been used, and
 - (ii) the consideration for the transfer.
- (6) Where the credit has not been transferred, and was not fully used, before its expiry, the amount in subsection (7) is to be reflected as a loss in the accounting period in which the credit expired.
- (7) That amount is the amount given by subtracting—
- (a) the amount of the credit that was used, from
 - (b) the sum of the purchase price of the credit and any amounts recognised in accordance with subsection (2).”
- (4) In section 175 (amounts excluded from covered tax balance), in subsection (2), in paragraph (c), after “credit”, in the second place it occurs, insert “, or in respect of a marketable transferable tax credit,”.
- (5) In section 176 (amounts to be reflected in covered tax balance), in subsection (2)—
- (a) in paragraph (d), in sub-paragraph (i), after “credit” insert “or a marketable transferable tax credit”, and

(b) in paragraph (e), after “credit” insert “or a marketable transferable tax credit”.

(6) After section 176 insert—

“Transferable tax credits

176A Meaning of “non-marketable transferable tax credits”

- (1) Sections 176B and 176C make provision about “non-marketable transferable tax credits”.
- (2) A tax credit held by a member of a multinational group that is the originator of the credit is a non-marketable transferable tax credit if—
 - (a) it may be transferred to another person or entity, and
 - (b) it is neither a marketable transferable tax credit nor a qualifying refundable tax credit.
- (3) A tax credit held by a member of a multinational group as a purchaser of the credit is a non-marketable transferable tax credit if it is neither a marketable transferable tax credit nor a qualifying refundable tax credit.
- (4) In this section and in sections 176B and 176C “originator” and “purchaser” are to be construed in accordance with section 148A(1)(a).

176B Value of non-marketable transferable tax credits: originator

- (1) The covered tax balance of a member of a multinational group that holds a non-marketable transferable tax credit as originator is to be adjusted to secure that the value of the credit is reflected as follows.
- (2) The value of the tax credit is to be reflected as it is used.
- (3) If the credit is transferred (after the end of the period of 15 months after the accounting period in which the credit is granted), the consideration for the transfer is to be reflected as a credit in the accounting period in which the transfer occurred.

176C Value of non-marketable transferable tax credits: purchaser

- (1) The covered tax balance of a member of a multinational group that holds a non-marketable transferable tax credit as purchaser is to be adjusted to secure that the value the credit is reflected as follows.
- (2) On using an amount of the credit, the amount given by subsection (3) is to be reflected as a credit in the covered tax balance for the accounting period in which it is used.
- (3) That amount is the amount given by multiplying—
 - (a) the amount used divided by the full value of the credit, by
 - (b) the amount given by subtracting the purchase price of the credit from the full value of the credit.
- (4) On transferring the credit, the amount in subsection (5) is—

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- (a) if positive, to be reflected as a credit in the covered tax balance for the accounting period in which the transfer occurred, or
 - (b) if negative, to be reflected as a loss in the underlying profits of the member for that period.
- (5) That amount is the amount given by subtracting—
- (a) the sum of—
 - (i) the purchase price of the credit, and
 - (ii) any amounts recognised reflected in the covered tax balance in accordance with subsection (2) (whether in that accounting period or a previous accounting period), from
 - (b) the sum of—
 - (i) the amount of the credit that has been used, and
 - (ii) the consideration for the transfer.
- (6) Where the credit has not been transferred, and was not fully used, before its expiry, the amount in subsection (7) is to be reflected as a loss in the underlying profits of the member for the accounting period in which the credit expired.
- (7) That amount is the amount given by subtracting—
- (a) the amount of the credit that was used, from
 - (b) the sum of the purchase price of the credit and any amounts recognised in accordance with subsection (2).”